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Fax

To: Ed Munder From: Betty GarrettFax: (919) 733-4810 Pages: 13From: Phone: (336) 641-3394 Date: 8/27/08Re: CC☒ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

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SMITH MOORE
LEATHERWOOD

August 13, 2008

Hand-Delivery

Ms. Betty G. Garrett
Deputy Director of Community Services
Guilford County Community and Development
301 West Market Street
Greensboro, NC 27401

Re: A-1 Sandrock, Inc. Franchise Amendment

Dear Betty:

I have enclosed the following items:

(1) A proposed Amendment to the Guilford County C&D Franchise issued to A-1 Sandrock, the original copy of which was drafted by Mike Newby. These revisions will update the current franchise to comply with the Solid Waste Act of 2007 and establish an alternative payment to the County by which the County would have a guaranteed minimum annual payment and a likely annual payment that greatly exceeds what would be paid under the current plan; and

(2) A Memorandum outlining the current versus proposed income structure for greater understanding of A-1's proposed payment plan.

A-1 respectfully request that this be properly noticed and placed on the September 18 County Commission agenda for its first reading and vote. By statute, the proposed franchise amendment must be placed in a public library for public review. We will make sure that the proposed amendment and existing franchise are placed at the public library at Vandalia and Holden Roads.

Please call me if you have any questions.

GREENSBORO 917940.1

Direct 336.378.5412 | Fax 336.433.7482 | tom.terrell@smithmoorelaw.com

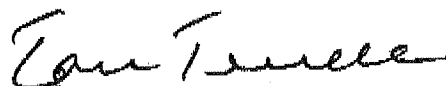
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Sincerely,

SMITH MOORE LEATHERWOOD LLP



Thomas E. Terrell, Jr.

TETjr/naf

Enclosures

Cc: Sharron Kurtz, Esq. (w/encls.)
Michael Newby, Esq. (w/encls.)
Nancy Roy, AICP (w/encls.)
David McNeill (w/encls.)
Ben Brown (w/encls.)
David Garrett (w/encls.)
A-1 Sandrock (w/encls.)



SMITH MOORE
LEATHERWOOD

MEMORANDUM

TO: Betty Garrett
FROM: Thomas E. Terrell, Jr.
DATE: August 13, 2008
RE: A-1 Sandrock C&D Franchise Amendment

When A-1 Sandrock and its representatives met with County officials on March 19, 2008, the primary issues were 1) modifying the existing franchise so that it was consistent with new North Carolina solid waste facility regulations and 2) determining ways the county could reliably receive more annual income from the A-1 facility.

This memo examines a) anticipated income based upon the existing franchise, b) proposes a sustainable method for providing substantially higher income to the county on an offered host fee of \$.40 per ton, and c) provides tonnage data to support waste stream calculations.

Income Based on Existing Arrangement

David Garrett, P.E. previously estimated income from the A-1 facility in a letter to Betty Garrett dated January 19, 2007. The potential income was based upon investing \$1.5M into a trust fund. A section of that letter is quoted from below.

"5.0 Administrative Fee to County

It is recognized that the County should derive some annual income from the operation of the facility to offset their costs for providing regulatory oversight. Typically, a host fee is agreed upon by privately owned landfill owners and the local government that is tied to the actual waste intake. This avoids placing an undue economic burden on the facility during startup, as well as adjusting the host fee to reflect prevailing economic conditions. To arrive at a suitable host fee, consider the interest on the \$1.5M deposit required under Article 5B of the Franchise Agreement (Section 1). At an assumed 4.25% APR (researched by A-1 Sandrock), the annual interest would be \$63,750, twenty percent (20%) of which would go to the County, equaling \$12,750 per year. If the County would consider a host fee of \$.25 per ton, with an estimated annual waste intake of 60,000 tons,

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the fee would be \$15,000 (subject to annual fluctuation). Language to this effect could be written into a revision of the Franchise Agreement by the County."

In April 2008, the average rate for 5-year CD was approximately 3.8%. For 1-year CDs the interest rates were closer to 2%. Thus, if the fund were paying interest based upon rates in today's climate, the income to the County would likely be lower than that calculated in 2003 or 2007. Unless the County has a funding mechanism available that pays higher interest rates than these, the County would derive more income from a tonnage-based host fee, and the estimated \$12,750 per year would have been a high estimate.

Income Based on Host Fee of \$.40

An annual host fee based upon \$.40 per ton times 60,000 tons would net \$24,000 annually to Guilford County – double the estimated income under the present arrangement.

It is important to note that, while C&D landfills have provided host fees in some circumstances, it is rare. Coble's C&D landfill in Alamance County is the only known private C&D landfill in the region that pays the county a host fee. Host fees paid by C&D facilities are now much more difficult to sustain because of the State's recently imposed \$2 per ton tax on all solid waste facilities and \$3 million bond for future site restoration costs, in addition to normal closure and post-closure financial assurance required by the 2006 C&D rule revisions.

This tonnage figure could fluctuate up or down based upon the region's economy. However, a guaranteed minimum annual payment of \$15,000 would eliminate risks that the county's income would be less under a tonnage-based host fee.

Waste Stream Analysis

Mr. Garrett has also analyzed the waste stream that would support this tonnage. Based on 2005 NC DENR Division of Waste Management Annual Reports (www.wastenotnc.org), the 21-county region within A-1's intended service area generated approximately 748,166 tons of C&D waste – the total of reporting facilities in the service area (Figure 1) excluding Uwharrie Regional (private) and Rockingham County (public), both of which codispose the MSW and C&D waste streams (see below).

An estimated 34% of the state-wide waste stream is C&D debris, based on the 2005 data. Assuming 34% of Uwharrie's total reported waste stream (760,703 tons) is C&D, that facility may have disposed of an estimated 258,639 tons of C&D within its waste stream in 2005. Similarly, Rockingham County would have disposed of an estimated 19,627 tons of C&D debris in 2005. Thus the 21-county region would have produced as much as 1,026,431 tons of C&D waste in 2005, from a population of 2,471,205 (in 2005). This reflects a regional annual per capita C&D debris generation rate of 0.42 tons (840 pounds per person).

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A-1's primary service area, from which it can reasonably expect to receive a majority of its C&D waste stream – i.e., the areas A-1 can cost effectively service with their affiliated roll-off company – includes an 8-county region including Guilford and the adjacent counties (Figure 2), which comprise 56% of the population within the 21-county service area. The 8-county area produced an estimated 574,801 tons of C&D wastes in 2005, assuming a consistent per capita C&D generation rate throughout the whole region. A-1's projected 60,000 ton/year waste intake represents approximately 10.4% of the C&D waste generated in the 8-county area.

Over the next 25 years – the anticipated service life of the A-1 facility – the North Carolina State Demographics Office (<http://demog.state.nc.us>) projects a population growth of approximately 40% within both the 21-county service area and the 8-county main service area. Based on the projections, the 8-county area is expected to contain 56% of the future population growth, consistent with the current distribution.

Within the 21-county region, if the per capita C&D generation rate remains consistent, the entire region would generate $3,276,658 * 0.42 = 1,376,196$ tons of C&D wastes per year by 2029. Assuming consistent per capita C&D generation rates throughout the region – actually slightly higher generation is anticipated within the more populated areas – and applying a 56% factor to the regional C&D generation, by 2029 C&D generation within the 8-county region would grow to approximately 770,670 tons per year – assuming consistent trends A-1 would be handling $770,670 \text{ tons} * 10.4\% = 80,150$ tons per year.

A-1's share of the regional waste stream is therefore expected to vary from 60,000 tons per year presently to 80,000 tons per year by 2029. This projection puts A-1's C&D waste intake similar to (or slightly larger than) Cobles' current C&D intake. Considering the regional growth projections and the eventual closure of the City of Greensboro's White Street C&D landfill (145,817 tons in 2005), where A-1's affiliated roll-off service is now taking most of their collected waste, A-1 can anticipate easily meeting it's targeted initial goal of 60,000 tons per year.

Summary of Proposal

A-1 proposes a paying Guilford County a host fee of forty cents per ton with a minimum guaranteed payment of \$15,000 per year. This arrangement would supplant the current structure which requires substantial payment up front and provides unguaranteed income at a probable lower annual payment.

Benefits to Guilford County

- Estimated revenues to Guilford County of \$24,000 and guaranteed revenues of \$15,000 per year to Guilford County, based on \$0.40 per ton for 60,000 tons per year.

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- These revenues will exceed those provided by the original Franchise Agreement (20% of the investment interest), estimated at \$12,750 per year, or less, depending on prevailing interest rates.
- These revenues will provide far more funding than is needed for the County's oversight of this one facility.
- These revenues are over and above routine property taxes and sales tax on anticipated 25 to 40 employee's expenditures within the community.
- The original Franchise Agreement negotiated in 2003 had a 10-year term – the Franchise Agreement will be due for renewal consideration in 2013.
- By renewal time the facility will have established an operational history and the income stream can be more accurately gauged.
- The County needs this facility in order to assure continued safe and cost-effective disposal of inert wastes for future generations.
- Permitting a new "green-site" facility would require an estimated 8 to 10 years, cost the County taxpayers several million dollars, and face severe and potentially divisive public opposition
- Based on population growth and waste generation projections, and the pending closure of White Street C&D Landfill (currently providing half of the County's C&D disposal capacity), Guilford County will need a new facility within a maximum 7 to 10 year timeframe, or face significant cost increases for transporting C&D wastes to other jurisdictions.
- A-1's C&D disposal facility is already permitted and ready for operation – at no cost to the County.
- The facility is located within a rural setting undergoing commercial/industrial development, adjacent to excellent transportation corridors, requiring no waste transportation through heavily populated residential areas.
- Planned recycling activities at this facility will extend the life of A-1 Sandrock's facility by an undetermined time period, providing both a long-term solution for C&D disposal and a revenue stream to Guilford County for decades to come.

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- The facility has been designed and permitted by licensed professionals who specialize in safe containment of wastes.
- The permitting studies established that the facility is situated within a safe location with no undue risk to local water supplies or the general public.
- There are no – and cannot be – any ground water users directly down gradient from the site.
- Modern rule requirements for operation and monitoring of C&D landfills will prevent unsafe waste disposal practices.
- Operations will be under the scrutiny of two State agencies staffed with professional specialists and the County's staff.
- A-1 will be bonded to the State for approximately \$4.5M to cover potential clean up and site restoration costs.
- If something goes wrong, there are mechanisms (procedures and funding) in place to correct any problems and to protect the public.
- Actual risks to the public are minimal to non-existent.

cc: Sharron Kurtz, Esq.
Michael Newby, Esq.
Nancy Roy AICP
David McNeill
Ben Brown
A-1 Sandroek

NORTH CAROLINA
GUILFORD COUNTY

**AMENDMENT TO GUILFORD COUNTY
FRANCHISE FOR CONSTRUCTION AND
DEMOLITION DEBRIS LANDFILL
GRANTED TO A-1 SANDROCK, INC.**

THIS AGREEMENT, made and entered into by and between GUILFORD COUNTY ("Guilford"), a body politic and corporate of the State of North Carolina, and A-1 SANDROCK, INC., ("Franchisee") shown below, in accordance with N.C. General Statute §130A-294(b1)(3), N.C. General Statute §153A-136, N.C. General Statute §153A-46, Section 15.5-5 of the Guilford County Code, and other applicable laws as they have been modified or amended by the State of North Carolina and Guilford County, amends and modifies the previously granted Franchise to A-1 Sandrock to operate a Construction and Demolition Debris Landfill and insures that permitting and operation of the site is in full compliance with applicable state statutes and regulations. Therefore the parties have agreed to the following amendments and supplements to the existing Franchise Agreement as approved by the Guilford County Board of County Commissioners on November 6, 2003. The previously agreed upon terms of the franchise remain in full force and effect except as amended or modified below:

WITNESSETH:

1. Paragraph 2 of the Franchise is amended as follows: The correct address of the subject property is 2091 Bishop Road in Guilford County, North Carolina. Further the geographic area to be served by the franchisee may include the following counties within a fifty mile radius of the site: Guilford, Randolph, Rockingham, Alamance, Forsyth, Davidson, Stokes, Surry, Yadkin, Caswell, Person, Orange, Durham, Chatham, Moore, Montgomery, Stanley, Rowan, Cabarrus, Lee and Davie. Except as modified herein, the provisions of Paragraph 2 remain in full force and effect.

2. Paragraph 3 of the Franchise is amended as follows: Franchisee anticipates the site will dispose of between 200 and 300 tons per day in volume of debris. The County's Solid Waste plan establishes a goal of 0% waste stream increase over the next ten years and therefore the operation of the franchise with 10% recycling works toward the established goal. Franchisee intends to operate a Treatment and Processing facility on the site to receive, process (grind and stockpile) and distribute inert materials (mostly wood debris and recycled aggregates) derived from its permitted waste stream. Except as modified herein, the provisions of Paragraph 3 remain in full force and effect.

3. Paragraph 4 of the Franchise is amended as follows: A projection of the useful life of the landfill is twenty (20) years. A projection of the maximum closure cost at a point ten (10) years from the granting of the Franchise is approximately one million five hundred thousand (\$1,500,000) dollars, which cost shall be bonded with the State of North Carolina through the Department of Environment and Natural Resources. Both projections are certified as sufficient by Franchisee according to the best information available to it. Franchisee shall comply fully with all statutory and regulatory requirements regarding closure.

4. Paragraph 5 of the franchise is amended in its entirety as follows:

A. Franchisee shall timely provide and update all financial assurance obligations as required by North Carolina General Statutes and Solid Waste regulations and as required by all permits issued and monitored by the Division of Solid Waste of the North Carolina Department of Environment and Natural Resources.

B. Franchisee shall annually pay to the County a host fee equal to \$.40 per disposed ton, as measured by tonnage records kept and monitored by the Division of

Solid Waste. The host fee calendar year shall run from the first day of the month in which Franchisee receives a permit to operate from the Division of Waste Management until the first day of the same month in the succeeding calendar year. Payment shall be due no later than the tenth (10th) day of the next month following the anniversary date in each succeeding year.

C. Franchisee guarantees annual host fee income to the county of \$15,000 per year, which is calculated upon an estimated disposal rate of 37,500 tons per year times forty cents per ton. Franchisee shall pay the county the difference between the generated host fee and \$15,000 for disposed tonnage in excess of 37,500 tons at the same time the annual host fee payment is due.

5. Paragraph 8 of the Franchise is amended as follows: Proposed phased development plans, facility plan, boundaries of waste, final elevations and capacity of all waste disposal units as well as location of soil borrow areas, leachate facilities and all other facilities and infrastructure including ingress and egress and their terms as described in Exhibits F through K attached hereto are expressly made a part of this agreement. Except as modified herein, the provisions of Paragraph 8 remain in full force and effect.

6. Paragraph 9 of the Franchise is amended as follows: Franchisee shall be solely responsible for all acts or omissions arising out of ownership and/or operation of the landfill. Franchisee expressly hereby agrees to save and hold harmless and defend Guilford County, its agents, employees and assigns, from and against all claims, demands, acts, damages, and omissions whatever arising out of ownership and/or operation of the landfill, including all costs and attorney's fees. Franchisee shall

maintain in full force and effect at all times general liability insurance against damage to persons or property arising out of the collection, transportation, or on-site disposal operations by Franchisee or its agents at the landfill. Said general liability shall indemnify and hold Guilford County harmless and shall name Guilford County as an additional insured. Policy limits shall not be less than \$1,000,000 per incident and \$2,000,000 aggregate. Said general liability insurance policy is not to be construed as environmental pollution coverage. In addition, Franchisee shall provide automobile, workers' compensation, and other insurance required by law. Certificates of insurance shall be provided to the County upon request. Copies of the approved liability and other referenced insurances are attached hereto as Exhibit D.

7. Paragraph 11 of the Franchise is amended as follows: In addition to any State requirements, Franchisee shall submit to the County by the 10th of each month reports with specific information concerning the volume received as described by county of geographic origin, volume recycled, number of loads turned away (if any), reason for any refusal and the identity of any customer of refused load and a list of all customers, described by county of geographic origin.

This amendment to the previous Franchise Agreement shall be effective upon approval by the Guilford County Board of Commissioners on second reading, as provided in N.C. General Statute §153A-46.

Approved on second reading this _____ day of _____, 2008.

APPROVED AS TO CONTENT:

Department Representative

APPROVED AS TO FORM & LEGALITY:

County Attorney

ATTEST:

GUILFORD COUNTY

Clerk to Board

County Manager

This instrument has been pre-audited
In the manner required by the Local
Government Budget and Fiscal Control
Act.

Finance Director

ATTEST:

Corporate Secretary

A-1 SANDROCK, INC.

President

APPROVED AS TO LEGAL SUFFICIENCY

County Attorney